

House File 469 - Reprinted

HOUSE FILE 469
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 143)

(As Amended and Passed by the House March 13, 2013)

A BILL FOR

1 An Act relating to business corporations, including by
2 providing for their organization and operation; providing
3 for the relationship between shareholders, directors, and
4 officers; and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

PRINCIPAL PROVISIONS

Section 1. Section 490.140, subsections 3, 6, 9, and 26, Code 2013, are amended to read as follows:

3. "*Conspicuous*" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, printing text in italics, ~~or boldface,~~ ~~or contrasting color,~~ ~~or typing in capitals,~~ or underlined, is conspicuous.

6. "*Deliver*" or "*delivery*" means any method of delivery used in conventional commercial practice, including delivery ~~in person,~~ by hand, mail, commercial delivery, and, if authorized in accordance with section 490.141, by electronic transmission.

9. "*Electronic transmission*" or "*electronically transmitted*" means any form or process of communication not directly involving the physical transfer of paper that or another tangible medium, which is suitable all of the following:

a. Suitable for the retention, retrieval, and reproduction of information by the recipient.

b. Retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 490.141, subsection 10.

26. "*Sign*" or "*signature*" means, with present intent to authenticate or adopt a document, doing any of the following:

a. Executing or adopting a tangible symbol to a document, and includes any manual, facsimile, or conformed, or electronic signature.

b. Attaching to or logically associating with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

Sec. 2. Section 490.140, Code 2013, is amended by adding the following new subsections:

NEW SUBSECTION. 7A. "*Document*" means any of the following:

a. A tangible medium on which information is inscribed, and

1 includes any writing or written instrument.

2 **b.** An electronic record.

3 NEW SUBSECTION. 7B. "*Domestic unincorporated entity*" means
4 an unincorporated entity whose internal affairs are governed by
5 the laws of this state.

6 NEW SUBSECTION. 8A. "*Electronic*" means relating to
7 technology having electrical, digital, magnetic, wireless,
8 optical, electromagnetic, or similar capabilities.

9 NEW SUBSECTION. 8B. "*Electronic record*" means information
10 that is stored in an electronic or other medium and is
11 retrievable in paper form through an automated process used in
12 conventional commercial practice, unless otherwise authorized
13 in accordance with section 490.141, subsection 10.

14 NEW SUBSECTION. 11A. "*Expenses*" means reasonable expenses
15 of any kind that are incurred in connection with a matter.

16 NEW SUBSECTION. 21B. "*Qualified director*" means the same
17 as defined in section 490.143.

18 NEW SUBSECTION. 32. "*Writing*" or "*written*" means any
19 information in the form of a document.

20 Sec. 3. Section 490.141, Code 2013, is amended to read as
21 follows:

22 **490.141 Notice or other communication.**

23 1. Notice under this chapter must be in writing unless oral
24 notice is reasonable under in the circumstances. ~~Notice by~~
25 ~~electronic transmission is written notice.~~ Unless otherwise
26 agreed between the sender and the recipient, words in a notice
27 or other communication under this chapter must be in English.

28 2. ~~Notice~~ A notice or other communication may be
29 ~~communicated in person; by mail or other~~ given or sent by
30 any method of delivery; or by telephone, voice mail, or
31 ~~other,~~ except that electronic means transmissions must be in
32 accordance with this section. If these ~~forms of personal~~
33 ~~notice~~ methods of delivery are impracticable, a notice or
34 other communication may be communicated by a newspaper of
35 general circulation in the area where published; or by radio,

1 television, or other form of public broadcast communication.

2 ~~3. Written notice by a domestic or foreign corporation to~~
3 ~~its shareholder, if in a comprehensible form, is effective~~
4 ~~according to one of the following:~~

5 ~~a. Upon deposit in the United States mail, if mailed~~
6 ~~postpaid and correctly addressed to the shareholder's address~~
7 ~~shown in the corporation's current record of shareholders.~~

8 ~~b. When electronically transmitted to the shareholder in a~~
9 ~~manner authorized by the shareholder.~~

10 ~~4. Written notice~~ Notice or other communication to a
11 domestic or foreign corporation authorized to transact business
12 in this state may be ~~addressed~~ delivered to its registered
13 agent at its registered office or to the secretary of the
14 corporation ~~or its secretary~~ at its principal office shown in
15 its most recent biennial report or, in the case of a foreign
16 corporation that has not yet delivered a biennial report, in
17 its application for a certificate of authority.

18 4. Notice or other communications may be delivered by
19 electronic transmission if consented to by the recipient or if
20 authorized by subsection 10.

21 5. Any consent under subsection 4 may be revoked by the
22 person who consented by written or electronic notice to the
23 person to whom the consent was delivered. Any such consent is
24 deemed revoked if all of the following apply:

25 a. The corporation is unable to deliver two consecutive
26 electronic transmissions given by the corporation in accordance
27 with such consent.

28 b. Such inability becomes known to the secretary or an
29 assistant secretary of the corporation or to the transfer
30 agent, or other person responsible for the giving of notice
31 or other communications; provided, however, the inadvertent
32 failure to treat such inability as a revocation shall not
33 invalidate any meeting or other action.

34 6. Unless otherwise agreed between the sender and the
35 recipient, an electronic transmission is received when all of

1 the following apply:

2 a. The electronic transmission enters an information
 3 processing system that the recipient has designated or uses
 4 for the purposes of receiving electronic transmissions or
 5 information of the type sent, and from which the recipient is
 6 able to retrieve the electronic transmission.

7 b. The electronic transmission is in a form capable of being
 8 processed by that system.

9 7. Receipt of an electronic acknowledgment from an
 10 information processing system described in subsection 6,
 11 paragraph "a", establishes that an electronic transmission was
 12 received but, by itself, does not establish that the content
 13 sent corresponds to the content received.

14 8. An electronic transmission is received under this
 15 section even if no individual is aware of its receipt.

16 ~~5. 9. Except as provided in subsection 3, written notice,~~
 17 Notice or other communication if in a comprehensible form or
 18 manner, is effective at the earliest of any of the following:

19 a. ~~When received.~~ If in physical form, the earliest of
 20 when it is actually received or when it is left at any of the
 21 following:

22 (1) A shareholder's address shown on the corporation's
 23 record of shareholders maintained by the corporation under
 24 section 490.1601, subsection 3.

25 (2) A director's residence or usual place of business.

26 (3) The corporation's principal place of business.

27 ~~b. Five days after its deposit in the United States mail,~~
 28 ~~if~~ If mailed postpaid by United States mail postage prepaid
 29 and correctly addressed to a shareholder, upon deposit in the
 30 United States mail.

31 ~~c. On the date shown on the~~ If mailed by United States
 32 mail postage prepaid and correctly addressed to a recipient
 33 other than a shareholder, the earliest of when it is actually
 34 received or as follows:

35 (1) If sent by registered or certified mail, return receipt

1 requested, if sent by registered or certified mail, return
2 receipt requested, and the date shown on the return receipt is
3 signed by or on behalf of the addressee.

4 ~~6. Oral notice is effective when communicated if~~
5 ~~communicated in a comprehensible manner.~~

6 (2) Five days after it is deposited in the United States
7 mail.

8 d. If an electronic transmission, when it is received as
9 provided in subsection 6.

10 e. If oral, when communicated.

11 10. A notice or other communication may be in the form of
12 an electronic transmission that cannot be directly reproduced
13 in paper form by the recipient through an automated process
14 used in conventional commercial practice only if all of the
15 following apply:

16 a. The electronic transmission is otherwise retrievable in
17 perceivable form.

18 b. The sender and the recipient have consented in writing to
19 the use of such form of electronic transmission.

20 ~~7.~~ 11. If this chapter prescribes notice requirements for
21 notices or other communications in particular circumstances,
22 those requirements govern. If articles of incorporation or
23 bylaws prescribe notice requirements for notices or other
24 communications, not inconsistent with this section or other
25 provisions of this chapter, those requirements govern. The
26 articles of incorporation or bylaws may authorize or require
27 delivery of notices of meetings of directors by electronic
28 transmission.

29 **Sec. 4. NEW SECTION. 490.143 Qualified director.**

30 **1. For purposes of this chapter, a "qualified director"**
31 **is a director who takes action under any of the following**
32 **provisions, if at the time action is to be taken any of the**
33 **following applies:**

34 **a. Under section 490.744, the director does not have any of**
35 **the following:**

1 (1) A material interest in the outcome of the proceeding.

2 (2) A material relationship with a person who has such an
3 interest.

4 *b.* Under section 490.853 or 490.855, all of the following
5 apply:

6 (1) The director is not a party to the proceeding.

7 (2) The director is not a director as to whom a transaction
8 is a director's conflicting interest transaction or who sought
9 a disclaimer of the corporation's interest in a business
10 opportunity under section 490.870, which transaction or
11 disclaimer is challenged in the proceeding.

12 (3) The director does not have a material relationship with
13 a director described in either subparagraph (1) or (2).

14 *c.* Under section 490.862, the director is not any of the
15 following:

16 (1) A director as to whom the transaction is a director's
17 conflicting interest transaction.

18 (2) A director who has a material relationship with another
19 director as to whom the transaction is a director's conflicting
20 interest transaction.

21 *d.* Under section 490.870, the director would be a qualified
22 director under paragraph "c", if the business opportunity was a
23 director's conflicting interest transaction.

24 2. For purposes of this section, all of the following apply:

25 *a.* "*Material interest*" means an actual or potential
26 benefit or detriment, other than one which would devolve on
27 the corporation or the shareholders generally, that would
28 reasonably be expected to impair the objectivity of the
29 director's judgment when participating in the action to be
30 taken.

31 *b.* "*Material relationship*" means a familial, financial,
32 professional, employment, or other relationship that would
33 reasonably be expected to impair the objectivity of the
34 director's judgment when participating in the action to be
35 taken.

1 3. The presence of one or more of the following
2 circumstances shall not automatically prevent a director from
3 being a qualified director:

4 *a.* Nomination or election of the director to the current
5 board by any director who is not a qualified director with
6 respect to the matter, or by any person that has a material
7 relationship with that director, acting alone or participating
8 with others.

9 *b.* Service as a director of another corporation of which a
10 director who is not a qualified director with respect to the
11 matter, or any individual who has a material relationship with
12 that director, is or was also a director.

13 *c.* With respect to action to be taken under section 490.744,
14 status as a named defendant, as a director against whom action
15 is demanded, or as a director who approved the conduct being
16 challenged.

17 Sec. 5. NEW SECTION. **490.144 Householding.**

18 1. A corporation has delivered written notice or any
19 other report or statement under this chapter, the articles of
20 incorporation, or the bylaws to all shareholders who share a
21 common address if all of the following apply:

22 *a.* The corporation delivers one copy of the notice, report,
23 or statement to the common address.

24 *b.* The corporation addresses the notice, report, or
25 statement to those shareholders either as a group or to each
26 of those shareholders individually or to the shareholders in a
27 form to which each of those shareholders has consented.

28 *c.* Each of those shareholders consents to delivery of
29 a single copy of such notice, report, or statement to the
30 shareholders' common address. Any such consent shall be
31 revocable by any of such shareholders who deliver written
32 notice of revocation to the corporation. If such written
33 notice of revocation is delivered, the corporation shall begin
34 providing individual notices, reports, or other statements
35 to the revoking shareholder no later than thirty days after

1 delivery of the written notice of revocation.

2 2. Any shareholder who fails to object by written notice
3 to the corporation, within sixty days of written notice by the
4 corporation of its intention to send single copies of notices,
5 reports, or statements to shareholders who share a common
6 address as permitted by subsection 1, shall be deemed to have
7 consented to receiving such single copy at the common address.

8 Sec. 6. Section 490.502, subsection 2, Code 2013, is amended
9 to read as follows:

10 2. If ~~a registered agent changes~~ the street address of the
11 a registered agent's business office changes, the ~~registered~~
12 agent may change the street address of the registered office of
13 any corporation for which the person is the registered agent by
14 notifying delivering a signed written notice of the change to
15 ~~the corporation in writing of the change and signing~~, either
16 ~~manually or in facsimile~~, and delivering to the secretary of
17 state for filing a signed statement that complies with the
18 requirements of subsection 1 and recites that the corporation
19 has been notified of the change.

20 Sec. 7. Section 490.620, subsection 4, Code 2013, is amended
21 to read as follows:

22 4. If a subscriber defaults in payment of money or
23 property under a subscription agreement entered into before
24 incorporation, the corporation may collect the amount owed
25 as any other debt. Alternatively, unless the subscription
26 agreement provides otherwise, the corporation may rescind the
27 agreement and may sell the shares if the debt remains unpaid
28 more than twenty days after the corporation sends a written
29 demand for payment to the subscriber.

30 Sec. 8. Section 490.624, Code 2013, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 3. The board of directors may authorize one
33 or more officers to do all of the following:

34 a. Designate the recipients of rights, options, warrants,
35 or other equity compensation awards that involve the issuance

1 of shares.

2 *b.* Determine, within an amount and subject to any other
3 limitations established by the board and, if applicable, the
4 stockholders, the number of such rights, options, warrants,
5 or other equity compensation awards and the terms thereof to
6 be received by the recipients, provided that an officer shall
7 not use such authority to designate the officer or any other
8 persons the board of directors may specify as a recipient of
9 such rights, options, warrants, or other equity compensation
10 awards.

11 Sec. 9. Section 490.701, subsection 1, Code 2013, is amended
12 to read as follows:

13 1. A Unless directors are elected by written consent in
14 lieu of an annual meeting as permitted by section 490.704, a
15 corporation shall hold annually, at a time stated in or fixed
16 in accordance with the bylaws, a meeting of shareholders;
17 provided, however, that if a corporation's articles of
18 incorporation authorize shareholders to cumulate their votes
19 when electing directors pursuant to section 490.728, directors
20 shall not be elected by less than unanimous consent.

21 Sec. 10. Section 490.703, Code 2013, is amended to read as
22 follows:

23 **490.703 Court-ordered meeting.**

24 1. The district court of the county where a corporation's
25 principal office, or, if none in this state, its registered
26 office, is located may summarily order a meeting to be held
27 ~~either:~~ pursuant to any of the following:

28 *a.* On application of any shareholder of the corporation
29 entitled to participate in an annual meeting if an annual
30 meeting was not held or action by written consent in lieu
31 thereof did not become effective within the earlier of six
32 months after the end of the corporation's fiscal year or
33 fifteen months after its last annual meeting.

34 *b.* On application of a shareholder who signed a demand for
35 a special meeting valid under section 490.702 if ~~either~~ any of

1 the following applies:

2 (1) Notice of the special meeting was not given within
3 thirty days after the date the demand was delivered to the
4 corporation's secretary.

5 (2) The special meeting was not held in accordance with the
6 notice.

7 2. The court may fix the time and place of the meeting,
8 ascertain the shares entitled to participate in the meeting,
9 specify a record date or dates for ascertaining shareholders
10 entitled to notice of and to vote at the meeting, prescribe the
11 form and content of the meeting notice, fix the quorum required
12 for specific matters to be considered at the meeting or direct
13 that the votes represented at the meeting constitute a quorum
14 for action on those matters, and enter other orders necessary
15 to accomplish the purpose or purposes of the meeting.

16 Sec. 11. Section 490.704, Code 2013, is amended to read as
17 follows:

18 **490.704 Action without meeting.**

19 1. Unless otherwise provided in the articles of
20 incorporation, any action required or permitted by this chapter
21 to be taken at a shareholders' meeting may be taken without
22 a meeting or vote, and, except as provided in subsection
23 5, without prior notice, if one or more written consents
24 describing the action taken are signed by the holders of
25 outstanding shares having not less than ninety percent of the
26 votes entitled to be cast at a meeting at which all shares
27 entitled to vote on the action were present and voted, and are
28 delivered to the corporation for inclusion in the minutes or
29 filing with the corporate records.

30 ~~2. A written consent shall bear the date of signature of~~
31 ~~each shareholder who signs the consent and no written consent~~
32 ~~is effective to take the corporate action referred to in~~
33 ~~the consent unless, within sixty days of the earliest dated~~
34 ~~consent delivered in the manner required by this section to the~~
35 ~~corporation, written consents signed by a sufficient number~~

~~1 of holders to take action are delivered to the corporation.~~
~~2 A written consent may be revoked by a writing to that effect~~
~~3 received by the corporation prior to the receipt by the~~
~~4 corporation of unrevoked written consents sufficient in number~~
~~5 to take corporate action. Except in the case of a public~~
~~6 corporation, the articles of incorporation may provide that~~
~~7 any action required or permitted by this chapter to be taken~~
~~8 at a shareholders' meeting may be taken without a meeting, and~~
~~9 without prior notice, if consents in writing setting forth the~~
~~10 action so taken are signed by the holders of outstanding shares~~
~~11 having not less than the minimum number of votes that would be~~
~~12 required to authorize or take the action at a meeting at which~~
~~13 all shares entitled to vote on the action were present and~~
~~14 voted. The written consent shall bear the date of signature~~
~~15 of the shareholder who signs the consent and be delivered to~~
~~16 the corporation for inclusion in the minutes or filing with the~~
~~17 corporate records.~~

~~18 3. If not otherwise fixed under section 490.703 or 490.707,~~
~~19 the record date for determining shareholders entitled to take~~
~~20 action without a meeting is the date the first shareholder~~
~~21 signs the consent under subsection 1. If not otherwise fixed~~
~~22 under section 490.707 and if prior board action is not required~~
~~23 respecting the action to be taken without a meeting, the~~
~~24 record date for determining the shareholders entitled to take~~
~~25 action without a meeting shall be the first date on which a~~
~~26 signed written consent is delivered to the corporation. If~~
~~27 not otherwise fixed under section 490.707 and if prior board~~
~~28 action is required respecting the action to be taken without~~
~~29 a meeting, the record date shall be the close of business on~~
~~30 the day the resolution of the board taking such prior action~~
~~31 is adopted. No written consent shall be effective to take~~
~~32 the corporate action referred to therein unless, within sixty~~
~~33 days of the earliest date on which a consent delivered to the~~
~~34 corporation as required by this section was signed, written~~
~~35 consents signed by sufficient shareholders to take the action~~

1 have been delivered to the corporation. A written consent
 2 may be revoked by a writing to that effect delivered to the
 3 corporation before unrevoked written consents sufficient in
 4 number to take the corporate action are delivered to the
 5 corporation.

6 4. A consent signed ~~under~~ pursuant to the provisions of this
 7 section has the effect of a meeting vote and may be described
 8 as such in any document. Unless the articles of incorporation,
 9 bylaws, or a resolution of the board of directors provides for
 10 a reasonable delay to permit tabulation of written consents,
 11 the action taken by written consent shall be effective when
 12 written consents signed by sufficient shareholders to take the
 13 action are delivered to the corporation.

14 ~~5. If this chapter requires that notice of proposed action~~
 15 ~~be given to shareholders not entitled to vote and the action~~
 16 ~~is to be taken by consent of the voting shareholders, the~~
 17 ~~corporation must give all shareholders written notice of the~~
 18 ~~proposed action at least ten days before the action is taken.~~
 19 ~~The notice must contain or be accompanied by the same material~~
 20 ~~that, under this chapter, would have been required to be sent~~
 21 ~~to shareholders not entitled to vote in a notice of meeting~~
 22 ~~at which the proposed action would have been submitted to the~~
 23 ~~shareholders for action.~~

24 ~~6. Prompt notice of the taking of corporate action without~~
 25 ~~a meeting by less than unanimous written consent shall be given~~
 26 ~~to those shareholders who have not consented in writing. If~~
 27 ~~the taking of that corporate action requires the giving of~~
 28 ~~notice under section 490.1320, subsection 2, the notice of~~
 29 ~~the action shall set forth the matters described in section~~
 30 ~~490.1322.~~

31 5. a. If this chapter requires that notice of a proposed
 32 action be given to nonvoting shareholders and the action is
 33 to be taken by written consent of the voting shareholders,
 34 the corporation must give its nonvoting shareholders written
 35 notice of the action not more than ten days after any of the

1 following:

2 (1) Written consents sufficient to take the action have been
3 delivered to the corporation.

4 (2) Such later date that tabulation of consents is completed
5 pursuant to an authorization under subsection 4.

6 b. The notice must reasonably describe the action taken and
7 contain or be accompanied by the same material that, under any
8 provision of this chapter, would have been required to be sent
9 to nonvoting shareholders in a notice of a meeting at which the
10 proposed action would have been submitted to the shareholders
11 for action.

12 6. a. If action is taken by less than unanimous written
13 consent of the voting shareholders, the corporation must give
14 its nonconsenting voting shareholders written notice of the
15 action not more than ten days after any of the following:

16 (1) Written consents sufficient to take the action have been
17 delivered to the corporation.

18 (2) Such later date that tabulation of consents is completed
19 pursuant to an authorization under subsection 4.

20 b. The notice must reasonably describe the action taken
21 and contain or be accompanied by the same material that, under
22 any provision of this chapter, would have been required to be
23 sent to voting shareholders in a notice of a meeting at which
24 the action would have been submitted to the shareholders for
25 action.

26 7. The notice requirements in subsections 5 and 6 shall not
27 delay the effectiveness of actions taken by written consent,
28 and a failure to comply with such notice requirements shall
29 not invalidate actions taken by written consent, provided that
30 this subsection shall not be deemed to limit judicial power
31 to fashion any appropriate remedy in favor of a shareholder
32 adversely affected by a failure to give such notice within the
33 required time period.

34 Sec. 12. Section 490.705, subsections 1 and 5, Code 2013,
35 are amended to read as follows:

1 1. A corporation shall notify shareholders of the date,
 2 time, and place of each annual and special shareholders'
 3 meeting no fewer than ten nor more than sixty days before
 4 the meeting date. The notice shall include the record date
 5 for determining the shareholders entitled to vote at the
 6 meeting, if such date is different than the record date for
 7 determining shareholders entitled to notice of the meeting. If
 8 the board of directors has authorized participation by means
 9 of remote communication pursuant to section 490.709 for any
 10 class or series of shareholders, the notice to such class or
 11 series of shareholders shall describe the means of remote
 12 communication to be used. Unless this chapter or the articles
 13 of incorporation require otherwise, the corporation is required
 14 to give notice only to shareholders entitled to vote at the
 15 meeting as of the record date for determining the shareholders
 16 entitled to notice of the meeting.

17 5. Unless the bylaws require otherwise, if an annual or
 18 special shareholders' meeting is adjourned to a different date,
 19 time, or place, notice need not be given of the new date,
 20 time, or place if the new date, time, or place is announced at
 21 the meeting before adjournment. If a new record date for the
 22 adjourned meeting is or must be fixed under section 490.707,
 23 however, notice of the adjourned meeting must be given under
 24 this section to ~~persons who are shareholders as of the new~~
 25 ~~record date~~ entitled to vote at such adjourned meeting as of
 26 the record date fixed for notice of such adjourned meeting.

27 Sec. 13. Section 490.707, Code 2013, is amended to read as
 28 follows:

29 **490.707 Record date.**

30 1. The bylaws may fix or provide the manner of fixing
 31 the record date or dates for one or more voting groups in
 32 order to determine the shareholders entitled to notice of a
 33 shareholders' meeting, to demand a special meeting, to vote,
 34 or to take any other action. If the bylaws do not fix or
 35 provide for fixing a record date, the board of directors of the

1 corporation may fix a future date as the record date.

2 2. A record date fixed under this section shall not be more
3 than seventy days before the meeting or action requiring a
4 determination of shareholders.

5 3. A determination of shareholders entitled to notice of
6 or to vote at a shareholders' meeting is effective for any
7 adjournment of the meeting unless the board of directors fixes
8 a new record date or dates, which it must do if the meeting is
9 adjourned to a date more than one hundred twenty days after the
10 date fixed for the original meeting.

11 4. If a court orders a meeting adjourned to a date more than
12 one hundred twenty days after the date fixed for the original
13 meeting, it may provide that the original record date continues
14 in effect or it may fix a new record date or dates.

15 5. The record date for a shareholders' meeting fixed by
16 or in the manner provided in the bylaws or by the board of
17 directors shall be the record date for determining shareholders
18 entitled both to notice of and to vote at the shareholders'
19 meeting unless, in the case of a record date fixed by the
20 board of directors and to the extent not prohibited by the
21 bylaws, the board, at the time it fixes the record date for
22 shareholders entitled to notice of the meeting, fixes a later
23 record date on or before the date of the meeting to determine
24 the shareholders entitled to vote at the meeting.

25 Sec. 14. NEW SECTION. **490.709 Remote participation in**
26 **annual and special meetings.**

27 1. Shareholders of any class or series may participate in
28 any meeting of shareholders by means of remote communication to
29 the extent the board of directors authorizes such participation
30 for such class or series. Participation by means of remote
31 communication shall be subject to such guidelines and
32 procedures as the board of directors adopts, and shall be in
33 conformity with subsection 2.

34 2. Shareholders participating in a shareholders' meeting
35 by means of remote communication shall be deemed present and

1 may vote at such a meeting if the corporation has implemented
2 reasonable measures to do all of the following:

3 a. Verify that each person participating remotely is a
4 shareholder.

5 b. Provide such shareholders a reasonable opportunity to
6 participate in the meeting and to vote on matters submitted to
7 the shareholders, including an opportunity to communicate, and
8 to read or hear the proceedings of the meeting, substantially
9 concurrently with such proceedings.

10 Sec. 15. Section 490.720, Code 2013, is amended to read as
11 follows:

12 **490.720 Shareholders' list for meeting.**

13 1. After fixing a record date for a meeting, a corporation
14 shall prepare an alphabetical list of the names of all its
15 shareholders who are entitled to notice of a shareholders'
16 meeting. ~~The~~ If the board of directors fixes a different
17 record date under section 490.707, subsection 5, to determine
18 the shareholders entitled to vote at the meeting, a corporation
19 also shall prepare an alphabetical list of the names of all
20 its shareholders who are entitled to vote at the meeting. A
21 list must be arranged by voting group and within each voting
22 group by class or series of shares, and show the address of and
23 number of shares held by each shareholder.

24 2. The shareholders' list for notice must be available for
25 inspection by any shareholder beginning two business days after
26 notice of the meeting is given for which the list was prepared
27 and continuing through the meeting, at the corporation's
28 principal office or at a place identified in the meeting notice
29 in the city where the meeting will be held. A shareholders'
30 list for voting must be similarly available for inspection
31 promptly after the record date for voting. A shareholder,
32 or a shareholder's agent or attorney, is entitled on written
33 demand to inspect and, subject to the requirements of section
34 490.1602, subsection 3 4, to copy ~~the~~ a list, during regular
35 business hours and at the person's expense, during the period

1 it is available for inspection.

2 3. The corporation shall make the ~~shareholders'~~ list of
3 shareholders entitled to vote available at the meeting, and any
4 shareholder, or a shareholder's agent or attorney, is entitled
5 to inspect the list at any time during the meeting or any
6 adjournment.

7 4. If the corporation refuses to allow a shareholder, or a
8 shareholder's agent or attorney, to inspect ~~the~~ a shareholders'
9 list before or at the meeting, or copy ~~the~~ a list as permitted
10 by subsection 2, the district court of the county where a
11 corporation's principal office or, if none in this state,
12 its registered office, is located, on application of the
13 shareholder, may summarily order the inspection or copying at
14 the corporation's expense and may postpone the meeting for
15 which the list was prepared until the inspection or copying is
16 complete.

17 5. Refusal or failure to prepare or make available ~~the~~ a
18 shareholders' list does not affect the validity of action taken
19 at the meeting.

20 Sec. 16. Section 490.722, subsection 2, Code 2013, is
21 amended by striking the subsection.

22 Sec. 17. Section 490.724, subsection 4, Code 2013, is
23 amended to read as follows:

24 4. The corporation and its officer or agent who accepts
25 or rejects a vote, consent, waiver, or proxy appointment in
26 good faith and in accordance with the standards of this section
27 ~~or section 490.722, subsection 2,~~ are not liable in damages
28 to the shareholder for the consequences of the acceptance or
29 rejection.

30 Sec. 18. Section 490.728, Code 2013, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 4. Shares otherwise entitled to vote
33 cumulatively shall not be voted cumulatively at a particular
34 meeting unless any of the following applies:

35 a. The meeting notice or proxy statement accompanying

1 the notice states conspicuously that cumulative voting is
2 authorized.

3 *b.* A shareholder who has the right to cumulate the
4 shareholder's votes gives notice to the corporation not less
5 than forty-eight hours before the time set for the meeting of
6 the shareholder's intent to cumulate votes during the meeting,
7 and if one shareholder gives this notice all other shareholders
8 in the same voting group participating in the election are
9 entitled to cumulate their votes without giving further notice.

10 Sec. 19. Section 490.732, subsection 4, Code 2013, is
11 amended to read as follows:

12 4. An agreement authorized by this section shall cease
13 to be effective when ~~shares of the corporation are listed~~
14 ~~on a national securities exchange or regularly traded in a~~
15 ~~market maintained by one or more members of a national or~~
16 ~~affiliated securities association~~ the corporation becomes a
17 public corporation. If the agreement ceases to be effective
18 for any reason, the board of directors may, if the agreement
19 is contained or referred to in the corporation's articles of
20 incorporation or bylaws, adopt an amendment to the articles of
21 incorporation or bylaws, without shareholder action, to delete
22 the agreement and any references to it.

23 Sec. 20. Section 490.742, subsection 2, Code 2013, is
24 amended to read as follows:

25 2. Ninety days have expired from the date delivery of
26 the demand was made, unless the shareholder has earlier been
27 notified that the demand has been rejected by the corporation
28 or unless irreparable injury to the corporation would result by
29 waiting for the expiration of the ninety-day period.

30 Sec. 21. Section 490.744, Code 2013, is amended to read as
31 follows:

32 **490.744 Dismissal.**

33 1. A derivative proceeding shall be dismissed by the court
34 on motion by the corporation if one of the groups specified
35 in subsection 2 or 6 5 has determined in good faith after

1 conducting a reasonable inquiry upon which its conclusions are
2 based that the maintenance of the derivative proceeding is
3 not in the best interests of the corporation. A corporation
4 moving to dismiss on this basis shall submit in support of the
5 motion a short and concise statement of the reasons for its
6 determination.

7 2. Unless a panel is appointed pursuant to subsection 6 5,
8 the determination in subsection 1 shall be made by ~~one~~ any of
9 the following:

10 a. A majority vote of ~~independent~~ qualified directors
11 present at a meeting of the board of directors if the
12 ~~independent~~ qualified directors constitute a quorum.

13 b. A majority vote of a committee consisting of two or more
14 ~~independent~~ qualified directors appointed by majority vote of
15 ~~independent~~ qualified directors present at a meeting of the
16 board of directors, whether or not such ~~independent~~ qualified
17 directors constitute a quorum.

18 ~~3. None of the following shall by itself cause a director to~~
19 ~~be considered not independent for purposes of this section:~~

20 a. ~~The nomination or election of the director by persons~~
21 ~~who are defendants in the derivative proceeding or against whom~~
22 ~~action is demanded.~~

23 b. ~~The naming of the director as a defendant in the~~
24 ~~derivative proceeding or as a person against whom action is~~
25 ~~demanded.~~

26 c. ~~The approval by the director of the act being challenged~~
27 ~~in the derivative proceeding or demand if the act resulted in~~
28 ~~no personal benefit to the director.~~

29 ~~4.~~ 3. a. If a derivative proceeding is commenced
30 after a determination has been made rejecting a demand by a
31 shareholder, the complaint shall allege with particularity
32 facts establishing ~~one~~ any of the following:

33 (1) That a majority of the board of directors did not
34 consist of ~~independent~~ qualified directors at the time the
35 determination was made.

1 (2) That the requirements of subsection 1 have not been met.

2 b. All discovery and other proceedings shall be stayed
3 during the pendency of any motion to dismiss unless the
4 court finds upon the motion of any party that particularized
5 discovery is necessary to preserve evidence or prevent undue
6 prejudice to that party.

7 5. 4. If a majority of the board of directors ~~does not~~
8 ~~consist~~ consisted of independent qualified directors at the
9 time the determination ~~is~~ was made, the corporation plaintiff
10 shall have the burden of proving that the requirements of
11 subsection 1 have not been met; if not, the corporation shall
12 have the burden of proving that the requirements of subsection
13 1 have been met. ~~If a majority of the board of directors~~
14 ~~consists of independent directors at the time the determination~~
15 ~~is made, the plaintiff shall have the burden of proving that~~
16 ~~the requirements of subsection 1 have not been met.~~

17 6. 5. The court may appoint a panel of one or more
18 independent persons upon motion by the corporation to make
19 a determination whether the maintenance of the derivative
20 proceeding is in the best interests of the corporation. In
21 such case, the plaintiff shall have the burden of proving that
22 the requirements of subsection 1 have not been met.

23 Sec. 22. Section 490.746, Code 2013, is amended to read as
24 follows:

25 **490.746 Payment of expenses.**

26 On termination of the derivative proceeding, the court may
27 do either any of the following:

28 1. Order the corporation to pay the plaintiff's ~~reasonable~~
29 ~~expenses, including attorney fees~~ incurred in the proceeding,
30 if it finds that the proceeding has resulted in a substantial
31 benefit to the corporation.

32 2. Order the plaintiff to pay any defendant's ~~reasonable~~
33 ~~expenses, including attorney fees~~ incurred in defending the
34 proceeding, if it finds that the proceeding was commenced or
35 maintained without reasonable cause or for an improper purpose.

1 Sec. 23. NEW SECTION. **490.748 Shareholder action to appoint**
2 **custodian or receiver.**

3 1. The district court may appoint one or more persons
4 to be custodians, or, if the corporation is insolvent, to
5 be receivers, of and for a corporation in a proceeding by a
6 shareholder where it is established that any of the following
7 applies:

8 *a.* The directors are deadlocked in the management of
9 the corporate affairs, the shareholders are unable to break
10 the deadlock, and irreparable injury to the corporation is
11 threatened or being suffered.

12 *b.* The directors or those in control of the corporation are
13 acting fraudulently and irreparable injury to the corporation
14 is threatened or being suffered.

15 2. *a.* The district court may issue injunctions, appoint a
16 temporary custodian or temporary receiver with all the powers
17 and duties the court directs, take other action to preserve the
18 corporate assets wherever located, and carry on the business of
19 the corporation until a full hearing is held.

20 *b.* The district court shall hold a full hearing, after
21 notifying all parties to the proceeding and any interested
22 persons designated by the court, before appointing a custodian
23 or receiver.

24 *c.* The district court has jurisdiction over the corporation
25 and all of its property, wherever located.

26 3. The district court may appoint an individual or domestic
27 or foreign corporation, authorized to transact business in this
28 state, as a custodian or receiver and may require the custodian
29 or receiver to post bond, with or without sureties, in an
30 amount the court directs.

31 4. The district court shall describe the powers and duties
32 of the custodian or receiver in its appointing order, which may
33 be amended from time to time. Among other powers, all of the
34 following apply:

35 *a.* A custodian may exercise all of the powers of the

1 corporation, through or in place of its board of directors, to
2 the extent necessary to manage the business and affairs of the
3 corporation.

4 *b.* A receiver may do any of the following:

5 (1) Dispose of all or any part of the assets of the
6 corporation wherever located, at a public or private sale, if
7 authorized by the district court.

8 (2) Sue and defend in the receiver's own name as receiver in
9 all courts of this state.

10 5. The district court during a custodianship may
11 redesignate the custodian as a receiver, and during a
12 receivership may redesignate the receiver as a custodian, if
13 doing so is in the best interests of the corporation.

14 6. The district court from time to time during the
15 custodianship or receivership may order compensation paid and
16 expense disbursements or reimbursements made to the custodian
17 or receiver from the assets of the corporation or proceeds from
18 the sale of its assets.

19 Sec. 24. Section 490.801, Code 2013, is amended to read as
20 follows:

21 **490.801 Requirement for and ~~duties~~ functions of board of**
22 **directors.**

23 1. Except as provided in section 490.732, each corporation
24 must have a board of directors.

25 2. All corporate powers shall be exercised by or under the
26 authority of the board of directors of the corporation, and
27 the business and affairs of the corporation shall be managed
28 by or under the direction, and subject to the oversight, of,
29 its board of directors, subject to any limitation set forth in
30 the articles of incorporation, or in an agreement authorized
31 under section 490.732.

32 Sec. 25. Section 490.807, Code 2013, is amended to read as
33 follows:

34 **490.807 Resignation of directors.**

35 1. A director may resign at any time by delivering a

1 written ~~notice~~ resignation to the board of directors, or its
2 ~~chairperson~~ chair, or to the secretary of the corporation.

3 2. A resignation is effective when the ~~notice~~ resignation
4 is delivered unless the ~~notice~~ resignation specifies a
5 later effective date or an effective date determined upon
6 the happening of an event or events. A resignation that is
7 conditioned upon failing to receive a specified vote for
8 election as a director may provide that it is irrevocable.

9 Sec. 26. Section 490.810, subsection 2, Code 2013, is
10 amended to read as follows:

11 2. If the vacant office was held by a director elected by
12 a voting group of shareholders, only the holders of shares of
13 that voting group are entitled to vote to fill the vacancy
14 if it is filled by the shareholders, and only the directors
15 elected by that voting group are entitled to fill the vacancy
16 if it is filled by the directors.

17 Sec. 27. NEW SECTION. 490.826 Submission of matters for
18 shareholder vote.

19 A corporation may agree to submit a matter to a vote of its
20 shareholders even if, after approving the matter, the board of
21 directors determines it no longer recommends the matter.

22 Sec. 28. Section 490.830, Code 2013, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 2A. In discharging board or committee
25 duties a director shall disclose, or cause to be disclosed,
26 to the other board or committee members information which
27 the director knows is not already known by them but is known
28 by the director to be material to the discharge of their
29 decision-making or oversight functions, except that disclosure
30 is not required to the extent that the director reasonably
31 believes that doing so would violate a duty imposed under law,
32 a legally enforceable obligation of confidentiality, or a
33 professional ethics rule.

34 Sec. 29. Section 490.831, subsection 1, paragraph a,
35 subparagraph (1), Code 2013, is amended to read as follows:

1 (1) No defense interposed by the director based on any of
2 the following precludes liability:

3 (a) A provision in the articles of incorporation authorized
4 by section 490.202, subsection 2, paragraph "d", ~~or the.~~

5 (b) The protection afforded by section 490.832 if
6 ~~interposed as a bar to the proceeding by the director, does not~~
7 ~~preclude liability~~ 490.861 for action taken in compliance with
8 section 490.862 or 490.863.

9 (c) The protection afforded by section 490.870.

10 Sec. 30. Section 490.831, subsection 3, paragraphs a and b,
11 Code 2013, are amended to read as follows:

12 a. In any instance where fairness is at issue, such
13 as consideration of the fairness of a transaction to the
14 corporation under section ~~490.832~~ 490.861, subsection 2,
15 paragraph "c", alter the burden of proving the fact or lack of
16 fairness otherwise applicable.

17 b. Alter the fact or lack of liability of a director
18 under another section of this chapter, such as the provisions
19 governing the consequences of an unlawful distribution under
20 section 490.833 or a transactional interest under section
21 ~~490.832~~ 490.861.

22 Sec. 31. Section 490.841, Code 2013, is amended to read as
23 follows:

24 **490.841 ~~Duties~~ Functions of officers.**

25 Each officer has the authority and shall perform the ~~duties~~
26 functions set forth in the bylaws or, to the extent consistent
27 with the bylaws, the ~~duties~~ functions prescribed by the board
28 of directors or by direction of an officer authorized by the
29 board of directors to prescribe the ~~duties~~ functions of other
30 officers.

31 Sec. 32. Section 490.842, subsection 1, unnumbered
32 paragraph 1, Code 2013, is amended to read as follows:

33 An officer when performing in such capacity ~~shall~~ has the
34 duty to act in conformity with all of the following:

35 Sec. 33. Section 490.850, subsection 2, Code 2013, is

1 amended to read as follows:

2 2. "*Director*" or "*officer*" means an individual who is or
 3 was a director or officer, respectively, of a corporation or
 4 who, while a director or officer of the corporation, is or was
 5 serving at the corporation's request as a director, officer,
 6 partner, trustee, employee, or agent of another domestic
 7 or foreign corporation, partnership, joint venture, trust,
 8 employee benefit plan, or other entity. A director or officer
 9 is considered to be serving an employee benefit plan at the
 10 corporation's request if the ~~director's~~ individual's duties to
 11 the corporation also impose duties on, or otherwise involve
 12 services by, ~~that director~~ the individual to the plan or to
 13 participants in or beneficiaries of the plan. "*Director*" or
 14 "*officer*" includes, unless the context requires otherwise, the
 15 estate or personal representative of a director or officer.

16 Sec. 34. Section 490.850, subsections 3 and 4, Code 2013,
 17 are amended by striking the subsections.

18 Sec. 35. Section 490.850, subsection 5, Code 2013, is
 19 amended to read as follows:

20 5. "*Liability*" means the obligation to pay a judgment,
 21 settlement, penalty, fine, including an excise tax assessed
 22 with respect to an employee benefit plan, or ~~reasonable~~
 23 expenses incurred with respect to a proceeding.

24 Sec. 36. Section 490.853, Code 2013, is amended to read as
 25 follows:

26 **490.853 Advance for expenses.**

27 1. A corporation may, before final disposition of
 28 a proceeding, advance funds to pay for or reimburse the
 29 reasonable expenses incurred in connection with the proceeding
 30 ~~by a director~~ an individual who is a party to a the proceeding
 31 ~~because the person is a director if the person that individual~~
 32 is a member of the board of directors if the director delivers
 33 all of the following to the corporation:

34 a. A signed written affirmation of the director's good
 35 faith belief that the ~~director has met the~~ relevant standard

1 of conduct described in section 490.851 has been met by the
 2 director or that the proceeding involved conduct for which
 3 liability has been eliminated under a provision of the articles
 4 of incorporation as authorized by section 490.202, subsection
 5 2, paragraph "d".

6 ~~b. The director's~~ A signed written undertaking of the
 7 director to repay any funds advanced if the director is not
 8 entitled to mandatory indemnification under section 490.852 and
 9 it is ultimately determined under section 490.854 or ~~section~~
 10 490.855 that the director has not met the relevant standard of
 11 conduct described in section 490.851.

12 2. The undertaking required by subsection 1, paragraph "b",
 13 must be an unlimited general obligation of the director but
 14 need not be secured and may be accepted without reference to
 15 the financial ability of the director to make repayment.

16 3. Authorizations under this section shall be made
 17 according to ~~one~~ any of the following:

18 *a.* By the board of directors as follows:

19 (1) If there are two or more ~~disinterested~~ qualified
 20 directors, by a majority vote of all the ~~disinterested~~
 21 qualified directors, a majority of whom shall for such purpose
 22 constitute a quorum, or by a majority of the members of a
 23 committee of two or more ~~disinterested~~ qualified directors
 24 appointed by such a vote.

25 (2) If there are fewer than two ~~disinterested~~ qualified
 26 directors, by the vote necessary for action by the board
 27 in accordance with section 490.824, subsection 3, in which
 28 authorization directors who ~~do~~ are not ~~qualify as disinterested~~
 29 qualified directors may participate.

30 *b.* By the shareholders, but shares owned by or voted under
 31 the control of a director who at the time ~~does not qualify as is~~
 32 not a disinterested qualified director ~~may~~ shall not be voted
 33 on the authorization.

34 Sec. 37. Section 490.855, Code 2013, is amended to read as
 35 follows:

1 **490.855 Determination and authorization of indemnification.**

2 1. A corporation shall not indemnify a director under
3 section 490.851 unless authorized for a specific proceeding
4 after a determination has been made that indemnification of
5 ~~the director~~ is permissible because the director has met the
6 relevant standard of conduct set forth in section 490.851.

7 2. The determination shall be made by any of the following:

8 a. If there are two or more ~~disinterested~~ qualified
9 directors, by the board of directors by a majority vote of all
10 the ~~disinterested~~ qualified directors, a majority of whom shall
11 for such purpose constitute a quorum, or by a majority of the
12 members of a committee of two or more ~~disinterested~~ qualified
13 directors appointed by such a vote.

14 b. By special legal counsel selected in one of the following
15 manners:

16 (1) Selected in the manner prescribed in paragraph "a".

17 (2) If there are fewer than two ~~disinterested~~ qualified
18 directors, selected by the board of directors, in which
19 selection directors who ~~do not qualify as disinterested~~ are not
20 qualified directors may participate.

21 c. By the shareholders, but shares owned by or voted under
22 the control of a director who at the time ~~does not qualify as a~~
23 ~~disinterested~~ is not a qualified director shall not be voted on
24 the determination.

25 3. Authorization of indemnification shall be made in
26 the same manner as the determination that indemnification
27 is permissible, except that if there are fewer than two
28 ~~disinterested~~ qualified directors or if the determination is
29 made by special legal counsel, authorization of indemnification
30 shall be made by those entitled ~~under subsection 2, paragraph~~
31 ~~"b",~~ to select special legal counsel under subsection 2,
32 paragraph "b", subparagraph (2).

33 Sec. 38. Section 490.858, Code 2013, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 1A. A right of indemnification or to

1 advances for expenses created by this division or under
 2 subsection 1 and in effect at the time of an act or omission
 3 shall not be eliminated or impaired with respect to such act
 4 or omission by an amendment of the articles of incorporation
 5 or bylaws or a resolution of the directors or shareholders,
 6 adopted after the occurrence of such act or omission, unless,
 7 in the case of a right created under subsection 1, the
 8 provision creating such right and in effect at the time of
 9 such act or omission explicitly authorizes such elimination or
 10 impairment after such act or omission has occurred.

11 Sec. 39. Section 490.858, subsection 3, Code 2013, is
 12 amended to read as follows:

13 3. A Subject to subsection 1A, a corporation may, by a
 14 provision in its articles of incorporation, limit any of the
 15 rights to indemnification or advance for expenses created by or
 16 pursuant to this part.

17 Sec. 40. NEW SECTION. 490.860 Part definitions.

18 As used in this part, unless the context otherwise requires:

19 1. "*Control*", including the term "*controlled by*", means any
 20 of the following:

21 a. Having the power, directly or indirectly, to elect or
 22 remove a majority of the members of the board of directors
 23 or other governing body of an entity, whether through the
 24 ownership of voting shares or interests, by contract, or
 25 otherwise.

26 b. Being subject to a majority of the risk of loss from the
 27 entity's activities or entitled to receive a majority of the
 28 entity's residual returns.

29 2. "*Director's conflicting interest transaction*" means
 30 a transaction effected or proposed to be effected by the
 31 corporation, or by an entity controlled by the corporation to
 32 which, or respecting which, any of the following applies:

33 a. To which, at the relevant time, the director is a party.

34 b. Respecting which, at the relevant time, the director
 35 had knowledge and a material financial interest known to the

1 director.

2 *c.* Respecting which, at the relevant time, the director knew
3 that a related person was a party or had a material financial
4 interest.

5 3. "*Fair to the corporation*" means, for purposes of section
6 490.861, subsection 2, paragraph "*c*", that the transaction
7 as a whole was beneficial to the corporation, taking into
8 appropriate account whether it was all of the following:

9 *a.* Fair in terms of the director's dealings with the
10 corporation.

11 *b.* Comparable to what might have been obtainable in an arm's
12 length transaction, given the consideration paid or received
13 by the corporation.

14 4. "*Material financial interest*" means a financial interest
15 in a transaction that would reasonably be expected to impair
16 the objectivity of the director's judgment when participating
17 in action on the authorization of the transaction.

18 5. "*Related person*" means any of the following:

19 *a.* The director's spouse.

20 *b.* A child, stepchild, grandchild, parent, stepparent,
21 grandparent, sibling, step sibling, half sibling, aunt, uncle,
22 niece, or nephew, or spouse of any thereof, of the director or
23 of the director's spouse.

24 *c.* An individual living in the same home as the director.

25 *d.* An entity, other than the corporation or an entity
26 controlled by the corporation, controlled by the director or
27 any person specified in this subsection.

28 *e.* A domestic or foreign person who is any of the following:

29 (1) A business or nonprofit corporation, other than the
30 corporation or an entity controlled by the corporation, of
31 which the director is a director.

32 (2) An unincorporated entity of which the director is a
33 general partner or a member of the governing body.

34 (3) An individual, trust, or estate for whom or of which the
35 director is a trustee, guardian, personal representative, or

1 like fiduciary.

2 *f.* A person that is, or an entity that is controlled by, an
3 employer of the director.

4 6. "*Relevant time*" means any of the following:

5 *a.* The time at which directors' action respecting the
6 transaction is taken in compliance with section 490.862.

7 *b.* If the transaction is not brought before the board of
8 directors of the corporation, or its committee, for action
9 under section 490.862, at the time the corporation, or an
10 entity controlled by the corporation, becomes legally obligated
11 to consummate the transaction.

12 7. "*Required disclosure*" means disclosure of all of the
13 following:

14 *a.* The existence and nature of the director's conflicting
15 interest.

16 *b.* All facts known to the director respecting the subject
17 matter of the transaction that a director free of such
18 conflicting interest would reasonably believe to be material in
19 deciding whether to proceed with the transaction.

20 Sec. 41. NEW SECTION. 490.861 Judicial action.

21 1. A transaction effected or proposed to be effected by the
22 corporation, or by an entity controlled by the corporation,
23 shall not be the subject of equitable relief, or give rise to
24 an award of damages or other sanctions against a director of
25 the corporation, in a proceeding by a shareholder or by or in
26 the right of the corporation, on the ground that the director
27 has an interest respecting the transaction, if it is not a
28 director's conflicting interest transaction.

29 2. A director's conflicting interest transaction may
30 not be the subject of equitable relief, or give rise to an
31 award of damages or other sanctions against a director of the
32 corporation, in a proceeding by a shareholder or by or in the
33 right of the corporation, on the ground that the director has
34 an interest respecting the transaction, if any of the following
35 apply:

1 *a.* Directors' action respecting the transaction was taken in
2 compliance with section 490.862 at any time.

3 *b.* Shareholders' action respecting the transaction was taken
4 in compliance with section 490.863 at any time.

5 *c.* The transaction, judged according to the circumstances
6 at the relevant time, is established to have been fair to the
7 corporation.

8 Sec. 42. NEW SECTION. **490.862 Directors' action.**

9 1. Directors' action respecting a director's conflicting
10 interest transaction is effective for purposes of section
11 490.861, subsection 2, paragraph "a", if the transaction has
12 been authorized by the affirmative vote of a majority, but
13 no fewer than two, of the qualified directors who voted on
14 the transaction, after required disclosure by the conflicted
15 director of information not already known by such qualified
16 directors, or after modified disclosure in compliance with
17 subsection 2, provided that all of the following apply:

18 *a.* The qualified directors have deliberated and voted
19 outside the presence of and without the participation by any
20 other director.

21 *b.* Where the action has been taken by a committee, all
22 members of the committee were qualified directors, and any of
23 the following apply:

24 (1) The committee was composed of all the qualified
25 directors on the board of directors.

26 (2) The members of the committee were appointed by the
27 affirmative vote of a majority of the qualified directors on
28 the board.

29 2. Notwithstanding subsection 1, when a transaction is
30 a director's conflicting interest transaction only because a
31 related person described in section 490.860, subsection 5,
32 paragraph "e" or "f", is a party to or has a material financial
33 interest in the transaction, the conflicted director is not
34 obligated to make required disclosure to the extent that the
35 director reasonably believes that doing so would violate a

1 duty imposed under law, a legally enforceable obligation of
2 confidentiality, or a professional ethics rule, provided that
3 the conflicted director discloses to the qualified directors
4 voting on the transaction all of the following:

5 a. All information required to be disclosed that is not so
6 violative.

7 b. The existence and nature of the director's conflicting
8 interest.

9 c. The nature of the conflicted director's duty not to
10 disclose the confidential information.

11 3. A majority, but no fewer than two, of all the qualified
12 directors on the board of directors, or on the committee,
13 constitutes a quorum for purposes of action that complies with
14 this section.

15 4. Where directors' action under this section does not
16 satisfy a quorum or voting requirement applicable to the
17 authorization of the transaction by reason of the articles of
18 incorporation, the bylaws, or a provision of law, independent
19 action to satisfy those authorization requirements must be
20 taken by the board of directors or a committee, in which action
21 directors who are not qualified directors may participate.

22 Sec. 43. NEW SECTION. **490.863 Shareholders' action.**

23 1. a. Shareholders' action respecting a director's
24 conflicting interest transaction is effective for purposes of
25 section 490.861, subsection 2, paragraph "b", if a majority of
26 the votes cast by the holders of all qualified shares are in
27 favor of the transaction after all of the following occur:

28 (1) Notice to shareholders describing the action to be taken
29 respecting the transaction.

30 (2) Provision to the corporation of the information
31 referred to in subsection 2.

32 (3) Communication to the shareholders entitled to vote
33 on the transaction of the information that is the subject of
34 required disclosure, to the extent the information is not known
35 by them.

1 *b.* In the case of shareholders' action at a meeting, the
2 shareholders entitled to vote shall be determined as of the
3 record date for notice of the meeting.

4 2. A director who has a conflicting interest respecting
5 the transaction shall, before the shareholders' vote, inform
6 the secretary or other officer or agent of the corporation
7 authorized to tabulate votes, in writing, of the number of
8 shares that the director knows are not qualified shares under
9 subsection 3, and the identity of the holders of those shares.

10 3. For purposes of this section, all of the following apply:

11 *a.* "Holder" means and "held by" refers to shares held by
12 both a record shareholder, as defined in section 490.1301,
13 subsection 7, and a beneficial shareholder, as defined in
14 490.1301, subsection 2.

15 *b.* "Qualified shares" means all shares entitled to be
16 voted with respect to the transaction except for shares that
17 the secretary or other officer or agent of the corporation
18 authorized to tabulate votes either knows, or under subsection
19 2 is notified, are held by any of the following:

20 (1) A director who has a conflicting interest respecting the
21 transaction.

22 (2) A related person of the director, excluding a person
23 described in section 490.860, subsection 5, paragraph "f".

24 4. A majority of the votes entitled to be cast by the
25 holders of all qualified shares constitutes a quorum for
26 purposes of compliance with this section. Subject to the
27 provisions of subsection 5, shareholders' action that otherwise
28 complies with this section is not affected by the presence of
29 holders, or by the voting, of shares that are not qualified
30 shares.

31 5. If a shareholders' vote does not comply with subsection
32 1 solely because of a director's failure to comply with
33 subsection 2, and if the director establishes that the failure
34 was not intended to influence and did not in fact determine the
35 outcome of the vote, the court may take such action respecting

1 the transaction and the director, and may give such effect,
 2 if any, to the shareholders' vote, as the court considers
 3 appropriate in the circumstances.

4 6. Where shareholders' action under this section does
 5 not satisfy a quorum or voting requirement applicable to the
 6 authorization of the transaction by reason of the articles of
 7 incorporation, the bylaws, or a provision of law, independent
 8 action to satisfy those authorization requirements must be
 9 taken by the shareholders, in which action shares that are not
 10 qualified shares may participate.

11 Sec. 44. Section 490.870, subsection 1, paragraphs a and b,
 12 Code 2013, are amended to read as follows:

13 a. Action by qualified directors disclaiming the
 14 corporation's interest in the opportunity is taken in
 15 compliance with the procedures set forth in section ~~490.832~~
 16 490.862, as if the decision being made concerned a director's
 17 conflicting interest transaction.

18 b. Shareholders' action disclaiming the corporation's
 19 interest in the opportunity is taken in compliance with the
 20 procedure set forth in section ~~490.832~~ 490.863, as if the
 21 decision being made concerned a director's conflicting interest
 22 transaction; except that, rather than making the disclosure
 23 "required disclosure" as ~~required~~ defined in section ~~490.832~~
 24 490.860, in each case the director shall have made prior
 25 disclosure to those acting on behalf of the corporation of all
 26 material facts concerning the business opportunity that are
 27 then known to the director.

28 Sec. 45. Section 490.1003, subsection 2, Code 2013, is
 29 amended to read as follows:

30 2. a. Except as provided in sections 490.1005, 490.1007,
 31 and 490.1008, after adopting the proposed amendment, the board
 32 of directors must submit the amendment to the shareholders for
 33 their approval. The board of directors must also transmit to
 34 the shareholders a recommendation that the shareholders approve
 35 the amendment, unless any of the following apply:

1 (1) The board of directors makes a determination that
2 because of conflicts of interest or other special circumstances
3 it should not make such a recommendation, ~~in which case the.~~

4 (2) Section 490.826 applies.

5 b. If paragraph "a", subparagraph (1) or (2), applies, the
6 ~~board of directors~~ must transmit to the shareholders the basis
7 for ~~the determination~~ so proceeding.

8 Sec. 46. Section 490.1104, subsection 2, Code 2013, is
9 amended to read as follows:

10 2. a. Except as provided in subsection 7 and in section
11 490.1105, after adopting the plan of merger or share exchange
12 the board of directors must submit the plan to the shareholders
13 for their approval. The board of directors must also transmit
14 to the shareholders a recommendation that the shareholders
15 approve the plan, unless ~~the~~ any of the following apply:

16 (1) The board of directors makes a determination that
17 because of conflicts of interest or other special circumstances
18 it should not make such a recommendation, ~~in which case.~~

19 (2) Section 490.826 applies.

20 b. If paragraph "a", subparagraph (1) or (2), applies, the
21 ~~board of directors~~ must transmit to the shareholders the basis
22 for ~~that determination~~ so proceeding.

23 Sec. 47. Section 490.1106, subsection 1, unnumbered
24 paragraph 1, Code 2013, is amended to read as follows:

25 After a plan of merger or share exchange has been adopted
26 and approved as required by this chapter, articles of merger
27 or share exchange shall be ~~executed~~ signed on behalf of each
28 party to the merger or share exchange by any officer or other
29 duly authorized representative. The articles shall set forth
30 the following:

31 Sec. 48. Section 490.1108, subsection 2, Code 2013, is
32 amended to read as follows:

33 2. If a merger or share exchange is abandoned under
34 subsection 1 after articles of merger or share exchange have
35 been filed with the secretary of state but before the merger

1 or share exchange has become effective, a statement that the
 2 merger or share exchange has been abandoned in accordance with
 3 this section, ~~executed~~ signed on behalf of a party to the
 4 merger or share exchange by an officer or other duly authorized
 5 representative, shall be delivered to the secretary of state
 6 for filing prior to the effective date of the merger or share
 7 exchange. Upon filing, the statement shall take effect and the
 8 merger or share exchange shall be deemed abandoned and shall
 9 not become effective.

10 Sec. 49. Section 490.1202, subsection 2, Code 2013, is
 11 amended to read as follows:

12 2. a. A disposition that requires approval of the
 13 shareholders under subsection 1 shall be initiated by
 14 a resolution by the board of directors authorizing the
 15 disposition. After adoption of such a resolution, the board
 16 of directors shall submit the proposed disposition to the
 17 shareholders for their approval. The board of directors shall
 18 also transmit to the shareholders a recommendation that the
 19 shareholders approve the proposed disposition, unless ~~the~~ any
 20 of the following apply:

21 (1) The board of directors makes a determination that
 22 because of conflicts of interest or other special circumstances
 23 it should not make such a recommendation, ~~in which case.~~

24 (2) Section 490.826 applies.

25 b. If paragraph "a", subparagraph (1) or (2), applies, the
 26 board of directors shall transmit to the shareholders the basis
 27 for that determination so proceeding.

28 Sec. 50. Section 490.1301, Code 2013, is amended by adding
 29 the following new subsection:

30 NEW SUBSECTION. 5A. "Interested transaction" means a
 31 corporate action described in section 490.1302, subsection 1,
 32 other than a merger pursuant to section 490.1105, involving an
 33 interested person in which any of the shares or assets of the
 34 corporation are being acquired or converted. As used in this
 35 definition, all of the following apply:

1 *a. "Beneficial owner"* means any person who, directly
2 or indirectly, through any contract, arrangement, or
3 understanding, other than a revocable proxy, has or shares the
4 power to vote, or to direct the voting of, shares; except that
5 a member of a national securities exchange is not deemed to be
6 a beneficial owner of securities held directly or indirectly
7 by it on behalf of another person solely because the member is
8 the record holder of the securities if the member is precluded
9 by the rules of the exchange from voting without instruction
10 on contested matters or matters that may affect substantially
11 the rights or privileges of the holders of the securities to
12 be voted. When two or more persons agree to act together for
13 the purpose of voting their shares of the corporation, each
14 member of the group formed thereby is deemed to have acquired
15 beneficial ownership, as of the date of the agreement, of all
16 voting shares of the corporation beneficially owned by any
17 member of the group.

18 *b. "Excluded shares"* means shares acquired pursuant to an
19 offer for all shares having voting power if the offer was made
20 within one year prior to the corporate action for consideration
21 of the same kind and of a value equal to or less than that paid
22 in connection with the corporate action.

23 *c. "Interested person"* means a person, or an affiliate of a
24 person, who at any time during the one-year period immediately
25 preceding approval by the board of directors of the corporate
26 action was or had any of the following:

27 (1) Was the beneficial owner of twenty percent or more of
28 the voting power of the corporation, other than as owner of
29 excluded shares.

30 (2) Had the power, contractually or otherwise, other than as
31 owner of excluded shares, to cause the appointment or election
32 of twenty-five percent or more of the directors to the board of
33 directors of the corporation.

34 (3) Was a senior executive or director of the corporation
35 or a senior executive of any affiliate thereof, and that

1 senior executive or director will receive, as a result of the
2 corporate action, a financial benefit not generally available
3 to other shareholders as such, other than any of the following:

4 (a) Employment, consulting, retirement, or similar benefits
5 established separately and not as part of or in contemplation
6 of the corporate action.

7 (b) Employment, consulting, retirement, or similar benefits
8 established in contemplation of, or as part of, the corporate
9 action that are not more favorable than those existing before
10 the corporate action or, if more favorable, that have been
11 approved on behalf of the corporation in the same manner as is
12 provided in section 490.862.

13 (c) In the case of a director of the corporation who will,
14 in the corporate action, become a director of the acquiring
15 entity in the corporate action or one of its affiliates, rights
16 and benefits as a director that are provided on the same basis
17 as those afforded by the acquiring entity generally to other
18 directors of such entity or such affiliate.

19 Sec. 51. Section 490.1302, subsection 2, paragraph a, Code
20 2013, is amended by striking the paragraph and inserting in
21 lieu thereof the following:

22 a. Appraisal rights shall not be available for the holders
23 of shares of any class or series of shares which is any of the
24 following:

25 (1) A covered security under section 18(b)(1)(A) or (B) of
26 the federal Securities Act of 1933, as amended.

27 (2) Traded in an organized market and has at least two
28 thousand shareholders and a market value of at least twenty
29 million dollars, exclusive of the value of such shares held by
30 the corporation's subsidiaries, senior executives, directors,
31 and beneficial shareholders owning more than ten percent of
32 such shares.

33 (3) Issued by an open-end management investment company
34 registered with the United States securities and exchange
35 commission under the federal Investment Company Act of 1940 and

1 may be redeemed at the option of the holder at net asset value.

2 Sec. 52. Section 490.1302, subsection 2, paragraph b,
3 subparagraph (1), Code 2013, is amended to read as follows:

4 (1) The record date fixed to determine the shareholders
5 entitled to receive notice of, ~~and to vote at,~~ the meeting
6 of shareholders to act upon the corporate action requiring
7 appraisal rights.

8 Sec. 53. Section 490.1302, subsection 2, paragraph d, Code
9 2013, is amended by striking the paragraph and inserting in
10 lieu thereof the following:

11 d. Paragraph "a", shall not be applicable and appraisal
12 rights shall be available pursuant to subsection 1 for the
13 holders of any class or series of shares where the corporate
14 action is an interested transaction.

15 Sec. 54. Section 490.1302, subsection 2, paragraph e, Code
16 2013, is amended by striking the paragraph.

17 Sec. 55. Section 490.1302, subsection 4, Code 2013, is
18 amended by striking the subsection.

19 Sec. 56. Section 490.1320, Code 2013, is amended to read as
20 follows:

21 **490.1320 Notice of appraisal rights.**

22 1. ~~If~~ Where any proposed corporate action ~~described~~
23 specified in section 490.1302, subsection 1, is to be submitted
24 to a vote at a shareholders' meeting, the meeting notice must
25 state that the corporation has concluded that the shareholders
26 are, are not, or may be entitled to assert appraisal rights
27 under this part. If the corporation concludes that appraisal
28 rights are or may be available, a copy of this part must
29 accompany the meeting notice sent to those record shareholders
30 entitled to exercise appraisal rights.

31 2. In a merger pursuant to section 490.1105, the parent
32 corporation must notify in writing all record shareholders of
33 the subsidiary who are entitled to assert appraisal rights
34 that the corporate action became effective. Such notice must
35 be sent within ten days after the corporate action became

1 effective and include the materials described in section
2 490.1322.

3 3. Where any corporate action specified in section
4 490.1302, subsection 1, is to be approved by written consent
5 of the shareholders pursuant to section 490.704, all of the
6 following apply:

7 a. Written notice that appraisal rights are, are not, or may
8 be available must be sent to each record shareholder from whom
9 a consent is solicited at the time consent of such shareholder
10 is first solicited and, if the corporation has concluded that
11 appraisal rights are or may be available, must be accompanied
12 by a copy of this chapter.

13 b. Written notice that appraisal rights are, are not, or
14 may be available must be delivered together with the notice to
15 nonconsenting and nonvoting shareholders required by section
16 490.704, subsections 5 and 6, may include the materials
17 described in section 490.1322 and, if the corporation has
18 concluded that appraisal rights are or may be available, must
19 be accompanied by a copy of this chapter.

20 4. Where corporate action described in section 490.1302,
21 subsection 1, is proposed, or a merger pursuant to section
22 490.1105 is effected, the notice referred to in subsection 1
23 or 3, if the corporation concludes that appraisal rights are
24 or may be available, and in subsection 2 shall be accompanied
25 by all of the following:

26 a. The annual financial statements specified in section
27 490.1620, subsection 1, of the corporation that issued the
28 shares that may be subject to appraisal, which shall be as of
29 a date ending not more than sixteen months before the date of
30 the notice and shall comply with section 490.1620, subsection
31 2; provided that, if such annual financial statements are not
32 reasonably available, the corporation shall provide reasonably
33 equivalent financial information.

34 b. The latest available quarterly financial statements of
35 such corporation, if any.

1 5. The right to receive the information described in
2 subsection 4 may be waived in writing by a shareholder before
3 or after the corporate action.

4 Sec. 57. Section 490.1321, Code 2013, is amended to read as
5 follows:

6 **490.1321 Notice of intent to demand payment.**

7 1. If ~~proposed a~~ corporate action ~~requiring appraisal~~
8 ~~rights under~~ specified in section 490.1302, subsection 1, is
9 submitted to a vote at a shareholders' meeting, a shareholder
10 who wishes to assert appraisal rights with respect to any class
11 or series of shares must do all of the following:

12 a. Deliver to the corporation before the vote is taken
13 written notice of the shareholder's intent to demand payment if
14 the proposed action is effectuated.

15 b. Not vote, or cause or permit to be voted, any shares of
16 such class or series in favor of the proposed action.

17 2. If a corporate action specified in section 490.1302,
18 subsection 1, is to be approved by less than unanimous written
19 consent, a shareholder who wishes to assert appraisal rights
20 with respect to any class or series of shares must not sign a
21 consent in favor of the proposed action with respect to that
22 class or series of shares.

23 3. A shareholder who ~~does not~~ fails to satisfy the
24 requirements of subsection 1 or 2, is not entitled to payment
25 under this part.

26 Sec. 58. Section 490.1322, subsection 1, Code 2013, is
27 amended to read as follows:

28 1. If proposed corporate action requiring appraisal rights
29 under section 490.1302, subsection 1, becomes effective, the
30 corporation must ~~deliver~~ send a written appraisal notice
31 and the form required by subsection 2, paragraph "a", to
32 all shareholders who satisfied the requirements of section
33 490.1321, subsection 1, or section 490.1321, subsection 2. In
34 the case of a merger under section 490.1105, the parent must
35 deliver ~~a written~~ an appraisal notice and form to all record

1 shareholders who may be entitled to assert appraisal rights.

2 Sec. 59. Section 490.1322, subsection 2, unnumbered
3 paragraph 1, Code 2013, is amended to read as follows:

4 The appraisal notice must be ~~sent~~ delivered no earlier than
5 the date the corporate action specified in section 490.1302,
6 subsection 1, became effective and no later than ten days after
7 such date and must do all of the following:

8 Sec. 60. Section 490.1322, subsection 2, paragraph a, Code
9 2013, is amended to read as follows:

10 a. ~~Be accompanied by~~ Supply a form that ~~specifies~~ does all
11 of the following:

12 (1) Specifies the first date of any announcement to
13 shareholders made prior to the date the corporate action became
14 effective of the first announcement to shareholders of the
15 principal terms of the proposed corporate action and requires,
16 if any.

17 (2) If such announcement was made, requires the shareholder
18 asserting appraisal rights to certify whether beneficial
19 ownership of those shares for which appraisal rights are
20 asserted was acquired before that date.

21 (3) Requires the shareholder asserting appraisal rights to
22 certify whether or not beneficial ownership of those shares for
23 which appraisal rights are asserted was acquired before that
24 date, and that the such shareholder did not vote for or consent
25 to the transaction.

26 Sec. 61. Section 490.1322, subsection 2, paragraph b,
27 subparagraph (2), Code 2013, is amended to read as follows:

28 (2) A date by which the corporation must receive the form,
29 which date shall not be fewer than forty nor more than sixty
30 days after the date the appraisal notice ~~and form are~~ is sent
31 under subsection 1, and state that the shareholder shall have
32 waived the right to demand appraisal with respect to the
33 shares unless the form is received by the corporation by such
34 specified date.

35 Sec. 62. Section 490.1323, subsections 1 and 3, Code 2013,

1 are amended to read as follows:

2 1. A shareholder who receives notice pursuant to section
 3 490.1322 and who wishes to exercise appraisal rights must
 4 ~~certify on~~ sign and return the form sent by the corporation
 5 and, in the case of certificated shares, deposit the
 6 shareholder's certificates in accordance with the terms of
 7 the notice by the date referred to in the notice pursuant to
 8 section 490.1322, subsection 2, paragraph "b", subparagraph
 9 (2). In addition, if applicable, the shareholder must certify
 10 on the form whether the beneficial owner of such shares
 11 acquired beneficial ownership of the shares before the date
 12 required to be set forth in the notice pursuant to section
 13 490.1322, subsection 2, paragraph "a". If a shareholder fails
 14 to make this certification, the corporation may elect to
 15 treat the shareholder's shares as after-acquired shares under
 16 section 490.1325. In addition, a shareholder who wishes to
 17 exercise appraisal rights must execute and return the form and,
 18 in a case of certificated shares, deposit the shareholder's
 19 certificates in accordance with the terms of the notice
 20 by the date referred to in the notice pursuant to section
 21 490.1322, subsection 2, paragraph "b", subparagraph (2). Once
 22 a shareholder deposits that shareholder's certificates or, in
 23 the case of uncertificated shares, returns the ~~executed~~ signed
 24 forms, that shareholder loses all rights as a shareholder,
 25 unless the shareholder withdraws pursuant to subsection 2.

26 3. A shareholder who does not ~~execute~~ sign and return the
 27 form and, in the case of certificated shares, deposit the
 28 shareholder's share certificates where required, each by the
 29 date set forth in the notice described in section 490.1322,
 30 subsection 2, shall not be entitled to payment under this
 31 division.

32 Sec. 63. Section 490.1324, subsection 2, paragraph a, Code
 33 2013, is amended to read as follows:

34 a. (1) ~~Financial~~ The annual financial statements specified
 35 in section 490.1620, subsection 1, of the corporation that

1 issued the shares to be appraised, ~~consisting of a balance~~
 2 ~~sheet as of the end of a fiscal year~~ which shall be of a date
 3 ending not more than sixteen months before the date of payment,
 4 ~~an income statement for that year, a statement of changes~~
 5 ~~in shareholders' equity for that year,~~ and the shall comply
 6 with section 490.1620, subsection 2; provided that, if such
 7 annual financial statements are not reasonably available, the
 8 corporation shall provide reasonably equivalent financial
 9 information.

10 (2) The latest available ~~interim~~ quarterly financial
 11 statements of such corporation, if any.

12 Sec. 64. Section 490.1325, subsection 1, Code 2013, is
 13 amended to read as follows:

14 1. A corporation may elect to withhold payment required
 15 by section 490.1324 from any shareholder who was required to,
 16 but did not certify that beneficial ownership of all of the
 17 shareholder's shares for which appraisal rights are asserted
 18 was acquired before the date set forth in the appraisal notice
 19 sent pursuant to section 490.1322, subsection 2, paragraph "a".

20 Sec. 65. Section 490.1331, Code 2013, is amended to read as
 21 follows:

22 **490.1331 Court costs and ~~counsel fees~~ expenses.**

23 1. The court in an appraisal proceeding commenced under
 24 section 490.1330 shall determine all court costs of the
 25 proceeding, including the reasonable compensation and expenses
 26 of appraisers appointed by the court. The court shall assess
 27 the court costs against the corporation, except that the court
 28 may assess court costs against all or some of the shareholders
 29 demanding appraisal, in amounts the court finds equitable, to
 30 the extent the court finds such shareholders acted arbitrarily,
 31 vexatiously, or not in good faith with respect to the rights
 32 provided by this division.

33 2. The court in an appraisal proceeding may also assess the
 34 ~~fees and expenses of counsel and experts~~ for the respective
 35 parties, in amounts the court finds equitable, for either any

1 of the following:

2 a. Against the corporation and in favor of any or all
3 shareholders demanding appraisal if the court finds the
4 corporation did not substantially comply with the requirements
5 of section 490.1320, 490.1322, 490.1324, or 490.1325.

6 b. Against either the corporation or a shareholder demanding
7 appraisal, in favor of any other party, if the court finds that
8 the party against whom the ~~fees and~~ expenses are assessed acted
9 arbitrarily, vexatiously, or not in good faith with respect to
10 the rights provided by this chapter.

11 3. If the court in an appraisal proceeding finds that the
12 ~~services of counsel for~~ expenses incurred by any shareholder
13 were of substantial benefit to other shareholders similarly
14 situated, and that ~~the fees for those services~~ such expenses
15 should not be assessed against the corporation, the court may
16 ~~award to such counsel reasonable fees to~~ direct that such
17 expenses be paid out of the amounts awarded the shareholders
18 who were benefited.

19 4. To the extent the corporation fails to make a required
20 payment pursuant to section 490.1324, 490.1325, or 490.1326,
21 the shareholder may sue directly for the amount owed and, to
22 the extent successful, shall be entitled to recover from the
23 corporation ~~all costs and~~ expenses of the suit, ~~including~~
24 ~~counsel fees~~.

25 Sec. 66. NEW SECTION. **490.1340 Other remedies limited.**

26 1. The legality of a proposed or completed corporate
27 action described in section 490.1302, subsection 1, shall not
28 be contested, nor may the corporate action be enjoined, set
29 aside, or rescinded, in a legal or equitable proceeding by a
30 shareholder after the shareholders have approved the corporate
31 action.

32 2. Subsection 1 does not apply to a corporate action that
33 meets any of the following conditions:

34 a. Was not authorized and approved in accordance with the
35 applicable provisions of any of the following:

- 1 (1) Division X, XI, or XII of this chapter.
- 2 (2) The articles of incorporation or bylaws.
- 3 (3) The resolution of the board of directors authorizing the
- 4 corporate action.

5 *b.* Was procured as a result of fraud, a material
6 misrepresentation, or an omission of a material fact necessary
7 to make statements made, in light of the circumstances in which
8 they were made, not misleading.

9 *c.* Is an interested transaction, unless it has been
10 recommended by the board of directors in the same manner as
11 is provided in section 490.862 and has been approved by the
12 shareholders in the same manner as is provided in section
13 490.863 as if the interested transaction were a director's
14 conflicting interest transaction.

15 *d.* Is approved by less than unanimous consent of the
16 voting shareholders pursuant to section 490.704, if all of the
17 following apply:

18 (1) The challenge to the corporate action is brought by a
19 shareholder who did not consent and as to whom notice of the
20 approval of the corporate action was not effective at least ten
21 days before the corporate action was effected.

22 (2) The proceeding challenging the corporate action is
23 commenced within ten days after notice of the approval of the
24 corporate action is effective as to the shareholder bringing
25 the proceeding.

26 Sec. 67. Section 490.1402, subsection 2, paragraph a, Code
27 2013, is amended to read as follows:

28 *a.* (1) The board of directors must recommend dissolution to
29 the shareholders unless ~~the~~ any of the following apply:

30 (a) The board of directors determines that because of
31 conflict of interest or other special circumstances it should
32 make no recommendation ~~and communicates.~~

33 (b) Section 490.826 applies.

34 (2) If paragraph "a", subparagraph (1) or (2), applies,
35 it must communicate the basis for ~~its determination to the~~

1 ~~shareholders~~ so proceeding.

2 Sec. 68. Section 490.1430, Code 2013, is amended to read as
3 follows:

4 **490.1430 Grounds for judicial dissolution.**

5 1. The district court may dissolve a corporation in any of
6 the following ways:

7 ~~1.~~ a. A proceeding by the attorney general, if it is
8 established that ~~either~~ any of the following apply:

9 ~~a.~~ (1) The corporation obtained its articles of
10 incorporation through fraud.

11 ~~b.~~ (2) The corporation has continued to exceed or abuse the
12 authority conferred upon it by law.

13 ~~2.~~ b. A proceeding by a shareholder if it is established
14 that any of the following conditions exist:

15 ~~a.~~ (1) The directors are deadlocked in the management of
16 the corporate affairs, the shareholders are unable to break the
17 deadlock, and either irreparable injury to the corporation is
18 threatened or being suffered, or the business and affairs of
19 the corporation can no longer be conducted to the advantage of
20 the shareholders generally, because of the deadlock.

21 ~~b.~~ (2) The directors or those in control of the corporation
22 have acted, are acting, or will act in a manner that is
23 illegal, oppressive, or fraudulent.

24 ~~c.~~ (3) The shareholders are deadlocked in voting power
25 and have failed, for a period that includes at least two
26 consecutive annual meeting dates, to elect successors to
27 directors whose terms have expired.

28 ~~d.~~ (4) The corporate assets are being misapplied or wasted.

29 ~~3.~~ c. A proceeding by a creditor if it is established that
30 ~~either~~ any of the following apply:

31 ~~a.~~ (1) The creditor's claim has been reduced to judgment,
32 the execution on the judgment returned unsatisfied, and the
33 corporation is insolvent.

34 ~~b.~~ (2) The corporation has admitted in writing that the
35 creditor's claim is due and owing and the corporation is

1 insolvent.

2 ~~4.~~ d. A proceeding by the corporation to have its voluntary
3 dissolution continued under court supervision.

4 e. A proceeding by a shareholder if the corporation has
5 abandoned its business and has failed within a reasonable time
6 to liquidate and distribute its assets and dissolve.

7 2. Subsection 1, paragraph "b", shall not apply in the
8 case of a corporation that, on the date of the filing of the
9 proceeding, has shares which are any of the following:

10 a. Listed on the New York stock exchange, the American stock
11 exchange, or on any exchange owned or operated by the NASDAQ
12 stock market, l.l.c., or listed or quoted on a system owned or
13 operated by the national association of securities dealers,
14 inc.

15 b. Not so listed or quoted, but are held by at least three
16 hundred shareholders and the shares outstanding have a market
17 value of at least twenty million dollars, exclusive of the
18 value of such shares held by the corporation's subsidiaries,
19 senior executives, directors, and beneficial shareholders
20 owning more than ten percent of such shares.

21 3. As used in this section, "beneficial shareholder" has the
22 meaning specified in section 490.1301, subsection 2.

23 Sec. 69. Section 490.1431, subsection 4, Code 2013, is
24 amended to read as follows:

25 4. Within ten days of the commencement of a proceeding
26 ~~under section 490.1430, subsection 2,~~ to dissolve a corporation
27 ~~that has no shares listed on a national securities exchange or~~
28 ~~regularly traded in a market maintained by one or more members~~
29 ~~of a national securities exchange~~ under section 490.1430,
30 subsection 1, paragraph "b", the corporation must send to all
31 shareholders, other than the petitioner, a notice stating that
32 the shareholders are entitled to avoid the dissolution of the
33 corporation by electing to purchase the petitioner's shares
34 under section 490.1434, and a copy of section 490.1434.

35 Sec. 70. Section 490.1432, subsections 1 and 5, Code 2013,

1 are amended to read as follows:

2 1. A Unless an election to purchase has been filed under
 3 section 490.1434, a court in a judicial proceeding brought to
 4 dissolve a corporation may appoint one or more receivers to
 5 wind up and liquidate, or one or more custodians to manage,
 6 the business and affairs of the corporation. The court shall
 7 hold a hearing, after notifying all parties to the proceeding
 8 and any interested persons designated by the court, before
 9 appointing a receiver or custodian. The court appointing a
 10 receiver or custodian has ~~exclusive~~ jurisdiction over the
 11 corporation and all its property wherever located.

12 5. The court from time to time during the receivership
 13 or custodianship may order compensation paid and ~~expense~~
 14 ~~disbursements or reimbursements made~~ expenses paid or
 15 reimbursed to the receiver or custodian ~~and the receiver's~~
 16 ~~or custodian's counsel~~ from the assets of the corporation or
 17 proceeds from the sale of the assets.

18 Sec. 71. Section 490.1434, subsections 1, 2, 4, and 5, Code
 19 2013, are amended to read as follows:

20 1. In a proceeding under section 490.1430, subsection 2 1,
 21 paragraph "b", to dissolve a corporation ~~that has no shares~~
 22 ~~listed on a national securities exchange or regularly traded~~
 23 ~~in a market maintained by one or more members of a national or~~
 24 ~~affiliated securities association~~, the corporation may elect
 25 or, if it fails to elect, one or more shareholders may elect to
 26 purchase all shares owned by the petitioning shareholder at the
 27 fair value of the shares. An election pursuant to this section
 28 shall be irrevocable unless the court determines that it is
 29 equitable to set aside or modify the election.

30 2. An election to purchase pursuant to this section may
 31 be filed with the court at any time within ninety days after
 32 the filing of the petition under section 490.1430, subsection
 33 2 1, paragraph "b", or at such later time as the court in its
 34 discretion may allow. If the election to purchase is filed
 35 by one or more shareholders, the corporation shall, within

1 ten days thereafter, give written notice to all shareholders,
2 other than the petitioner. The notice must state the name
3 and number of shares owned by the petitioner and the name and
4 number of shares owned by each electing shareholder and must
5 advise the recipients of their right to join the election to
6 purchase shares in accordance with this section. Shareholders
7 who wish to participate must file notice of their intention
8 to join in the purchase no later than thirty days after
9 the effective date of the notice to them. All shareholders
10 who have filed an election or notice of their intention to
11 participate in the election to purchase thereby become parties
12 to the proceeding and shall participate in the purchase in
13 proportion to their ownership of shares as of the date the
14 first election was filed, unless they otherwise agree or the
15 court otherwise directs. After an election has been filed by
16 the corporation or one or more shareholders, the proceeding
17 under section 490.1430, subsection 2 1, paragraph "b", shall
18 not be discontinued or settled, nor shall the petitioning
19 shareholder sell or otherwise dispose of the shareholder's
20 shares, unless the court determines that it would be equitable
21 to the corporation and the shareholders, other than the
22 petitioner, to permit such discontinuance, settlement, sale, or
23 other disposition.

24 4. If the parties are unable to reach an agreement as
25 provided for in subsection 3, the court, upon application of
26 any party, shall stay the section 490.1430, subsection 2 1,
27 paragraph "b", proceedings and determine the fair value of the
28 petitioner's shares as of the day before the date on which the
29 petition under section 490.1430, subsection 2 1, paragraph
30 "b", was filed or as of such other date as the court deems
31 appropriate under the circumstances.

32 5. Upon determining the fair value of the shares, the
33 court shall enter an order directing the purchase upon such
34 terms and conditions as the court deems appropriate, which may
35 include payment of the purchase price in installments, where

1 necessary in the interests of equity, provision for security
 2 to assure payment of the purchase price and any additional
 3 costs, fees, and expenses as may have been awarded, and, if
 4 the shares are to be purchased by shareholders, the allocation
 5 of shares among them. In allocating petitioner's shares among
 6 holders of different classes of shares, the court shall attempt
 7 to preserve the existing distribution of voting rights among
 8 holders of different classes insofar as practicable and may
 9 direct that holders of a specific class or classes shall not
 10 participate in the purchase. Interest may be allowed at the
 11 rate and from the date determined by the court to be equitable,
 12 but if the court finds that the refusal of the petitioning
 13 shareholder to accept an offer of payment was arbitrary or
 14 otherwise not in good faith, no interest shall be allowed. If
 15 the court finds that the petitioning shareholder has probable
 16 grounds for relief under section 490.1430, subsection 2 1,
 17 paragraph "b" or "~~d~~", subparagraph (2) or (4), it may award to
 18 the petitioning shareholder reasonable fees and expenses of
 19 counsel and of any experts employed by the shareholder.

20 Sec. 72. Section 490.1508, subsection 2, Code 2013, is
 21 amended to read as follows:

22 2. If ~~a registered agent changes~~ the street address of the
 23 a registered agent's business office changes, the ~~registered~~
 24 agent may change the street address of the registered office
 25 of any foreign corporation for which the ~~agent~~ person is the
 26 registered agent by notifying the corporation in writing of
 27 the change, and signing, ~~either manually or in facsimile~~, and
 28 delivering to the secretary of state for filing a statement of
 29 change that complies with the requirements of subsection 1 and
 30 recites that the corporation has been notified of the change.

31 Sec. 73. NEW SECTION. **490.1523 Transfer of authority.**

32 1. A foreign business corporation authorized to transact
 33 business in this state that converts to a foreign nonprofit
 34 corporation or to any form of foreign unincorporated entity
 35 that is required to obtain a certificate of authority or make

1 a similar type of filing with the secretary of state if it
2 transacts business in this state shall file with the secretary
3 of state an application for transfer of authority signed by
4 any officer or other duly authorized representative. The
5 application shall set forth all of the following:

6 a. The name of the corporation.

7 b. The type of unincorporated entity to which it has been
8 converted and the jurisdiction whose laws govern its internal
9 affairs.

10 c. Any other information that would be required in a filing
11 under the laws of this state by an unincorporated entity of the
12 type the corporation has become seeking authority to transact
13 business in this state.

14 2. The application for transfer of authority shall be
15 delivered to the secretary of state for filing and shall take
16 effect at the effective time provided in section 490.123.

17 3. Upon the effectiveness of the application for transfer of
18 authority, the authority of the corporation under this chapter
19 to transact business in this state shall be transferred without
20 interruption to the converted entity which shall thereafter
21 hold such authority subject to the provisions of the laws of
22 this state applicable to that type of unincorporated entity.

23 Sec. 74. Section 490.1601, subsection 4, Code 2013, is
24 amended to read as follows:

25 4. A corporation shall maintain its records in ~~written~~
26 the form of a document, including an electronic record, or in
27 another form capable of conversion into written paper form
28 within a reasonable time.

29 Sec. 75. Section 490.1602, Code 2013, is amended to read as
30 follows:

31 **490.1602 Inspection of records by shareholders.**

32 1. A shareholder of a corporation is entitled to
33 inspect and copy, during regular business hours at the
34 corporation's principal office, any of the records of the
35 corporation described in section 490.1601, subsection 5, if the

1 shareholder gives the corporation signed written notice of the
 2 shareholder's demand at least five business days before the
 3 date on which the shareholder wishes to inspect and copy.

4 2. For any meeting of shareholders for which the record date
 5 for determining shareholders entitled to vote at the meeting
 6 is different than the record date for notice of the meeting,
 7 any person who becomes a shareholder subsequent to the record
 8 date for notice of the meeting and is entitled to vote at
 9 the meeting is entitled to obtain from the corporation upon
 10 request the notice and any other information provided by the
 11 corporation to shareholders in connection with the meeting,
 12 unless the corporation has made such information generally
 13 available to shareholders by posting it on its internet site or
 14 by other generally recognized means. Failure of a corporation
 15 to provide such information does not affect the validity of
 16 action taken at the meeting.

17 3. A shareholder of a corporation is entitled to inspect and
 18 copy, during regular business hours at a reasonable location
 19 specified by the corporation, any of the following records
 20 of the corporation if the shareholder meets the requirements
 21 of subsection 3 4 and gives the corporation a signed written
 22 notice of the shareholder's demand at least five business days
 23 before the date on which the shareholder wishes to inspect and
 24 copy any of the following:

25 a. Excerpts from minutes of any meeting of the board of
 26 ~~directors, records of any action of~~ or a committee of the board
 27 of directors while acting in place of the board of directors
 28 on behalf of the corporation, minutes of any meeting of the
 29 shareholders, and records of action taken by the shareholders,
 30 ~~or board of directors, or a committee of the board~~ without
 31 a meeting, to the extent not subject to inspection under
 32 subsection 1 ~~of this section.~~

33 b. Accounting records of the corporation.

34 c. The record of shareholders.

35 ~~3-~~ 4. A shareholder may inspect and copy the records

1 described in subsection ~~2~~ 3 only if all of the following apply:

2 a. The shareholder's demand is made in good faith and for
3 a proper purpose.

4 b. The shareholder describes with reasonable particularity
5 the shareholder's purpose and the records the shareholder
6 desires to inspect.

7 c. The records are directly connected with the shareholder's
8 purpose.

9 ~~4.~~ 5. The right of inspection granted by this section shall
10 not be abolished or limited by a corporation's articles of
11 incorporation or bylaws.

12 ~~5.~~ 6. This section does not affect ~~either~~ any of the
13 following:

14 a. The right of a shareholder to inspect records under
15 section 490.720 or, if the shareholder is in litigation with
16 the corporation, to the same extent as any other litigant.

17 b. The power of a court, independently of this chapter, to
18 compel the production of corporate records for examination.

19 7. For purposes of this section, "shareholder" includes a
20 beneficial owner whose shares are held in a voting trust or by
21 a nominee on the shareholder's behalf.

22 Sec. 76. Section 490.1603, subsection 3, Code 2013, is
23 amended to read as follows:

24 3. The corporation may comply at its expense with a
25 shareholder's demand to inspect the record of shareholders
26 under section 490.1602, ~~subsection 2, paragraph "c",~~ by
27 providing the shareholder with a list of shareholders that was
28 compiled no earlier than the date of the shareholder's demand.

29 Sec. 77. Section 490.1604, subsection 2, Code 2013, is
30 amended to read as follows:

31 2. If a corporation does not within a reasonable time
32 allow a shareholder to inspect and copy any other records, the
33 shareholder who complies with section 490.1602, ~~subsections 2~~
34 ~~and 3~~ may apply to the district court in the county where the
35 corporation's principal office or, if none in this state, its

1 registered office is located for an order to permit inspection
 2 and copying of the records demanded. The court shall dispose
 3 of an application under this subsection on an expedited basis.

4 Sec. 78. Section 490.1606, subsection 1, Code 2013, is
 5 amended to read as follows:

6 1. Whenever notice ~~is~~ would otherwise be required to be
 7 given under any provision of this chapter to ~~any~~ a shareholder,
 8 such notice ~~shall need not be required to be~~ given if either
 9 any of the following ~~applies~~ apply:

10 a. ~~Notice~~ Notices to the shareholders of two consecutive
 11 annual meetings, and all notices of meetings during the period
 12 between such two consecutive annual meetings, have been sent to
 13 such shareholder at such shareholder's address as shown on the
 14 records of the corporation and have been returned undeliverable
 15 or could not be delivered.

16 b. All, but not less than two, payments of dividends on
 17 securities during a twelve-month period, or two consecutive
 18 payments of dividends on securities during a period of more
 19 than twelve months, have been sent to such shareholder at
 20 such shareholder's address as shown on the records of the
 21 corporation and have been returned undeliverable or could not
 22 be delivered.

23 Sec. 79. Section 490.1620, Code 2013, is amended by striking
 24 the section and inserting in lieu thereof the following:

25 **490.1620 Financial statements for shareholders.**

26 1. A corporation shall deliver to its shareholders
 27 annual financial statements, which may be consolidated or
 28 combined statements of the corporation and one or more of its
 29 subsidiaries, as appropriate, that include a balance sheet as
 30 of the end of the fiscal year, an income statement for that
 31 year, and a statement of changes in shareholders' equity for
 32 the year unless that information appears elsewhere in the
 33 financial statements. If financial statements are prepared for
 34 the corporation on the basis of generally accepted accounting
 35 principles, the annual financial statements must also be

1 prepared on that basis.

2 2. If the annual financial statements are reported upon by a
3 public accountant, the report must accompany them. If not, the
4 statements must be accompanied by a statement of the president
5 or the person responsible for the corporation's accounting
6 records which does all of the following:

7 a. States such person's reasonable belief whether the
8 statements were prepared on the basis of generally accepted
9 accounting principles and, if not, describing the basis of
10 preparation.

11 b. Describes any respects in which the statements were
12 not prepared on a basis of accounting consistent with the
13 statements prepared for the preceding year.

14 3. Within one hundred twenty days after the close of each
15 fiscal year, the corporation shall send the annual financial
16 statements to each shareholder. Thereafter, on written
17 request from a shareholder to whom the statements were not
18 sent, the corporation shall send the shareholder the latest
19 financial statements. A public corporation may fulfill its
20 responsibilities under this section by delivering the specified
21 financial statements, or otherwise making them available, in
22 any manner permitted by the applicable rules and regulations of
23 the United States securities and exchange commission.

24 Sec. 80. Section 490.1703, Code 2013, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 3. In the event that any provision of this
27 chapter is deemed to modify, limit, or supersede the federal
28 Electronic Signatures in Global and National Commerce Act, 15
29 U.S.C. § 7001 et seq., the provisions of this chapter shall
30 control to the maximum extent permitted by section 102(a)(2) of
31 that federal Act.

32 Sec. 81. REPEAL. Section 490.832, Code 2013, is repealed.

33 Sec. 82. EFFECTIVE DATE. This division of this Act takes
34 effect January 1, 2014.

35

DIVISION II

1 FUTURE PROVISIONS

2 Sec. 83. Section 490.140, subsection 21A, Code 2013, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 21A. "*Public corporation*" means a corporation that
6 has a class of voting stock that is listed on a national
7 securities exchange or held of record by more than two thousand
8 shareholders.

9 Sec. 84. EFFECTIVE DATE. This division of this Act takes
10 effect upon the repeal of 2011 Iowa Acts, chapter 2, as
11 provided in section 9, subsection 1, of that Act.